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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/910,085	07/20/2001	Kenneth B. Higgins	5113A	2412

7590 10/03/2006

Milliken & Company
P.O. Box 1927
Spartanburg, SC 29304

EXAMINER

JUSKA, CHERYL ANN

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 10/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/910,085

Applicant(s)

HIGGINS ET AL.

Examiner

Cheryl Juska

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-51,54,85,89-100,103-106,109-112,114,119,122,143-145 and 587 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-51,54,58-85,89-100,103-106,109-112,114,119,122 and 143-145 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Applicant's amendment filed August 15, 2006, has been entered. Claims 1, 7, 8, 14, 23, 24, 37, 38, 41, 50, 51, 58, 63, 68-70, 76, 81, 95, and 98 have been amended as requested. Claims 2, 52, 53, 55-57, 86-88, 101, 102, 107, 108, 113, 115-118, 120, 121, and 123-142 have been cancelled. New claims 144 and 145 have been added. Thus, the pending claims are 1, 3-51, 54, 58-85, 89-100, 103-106, 109-112, 114, 119, 122, and 143-145.

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1, 3, 4, 7-17, 19-42, 44-50, 51, 54, 58-60, 62-67, 69-73, 75-85, 89-100, 103-106, 109-112, 114, 119, 122, and 143 stand rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,522,857 issued to HIGGINS in view of 5,610,207 issued to DE SIMONE et al. and in further view of US 5,540,968 issued to HIGGINS as set forth in previous Office Actions.

Applicant has amended the independent claims to recite the limitation "the rebond foam cushion comprises a preformed rebond foam sheet." However, it is argued that said amendment is insufficient to overcome the standing rejection. Specifically, the recitation to "a preformed rebond foam sheet" is a method limitation in an article claim. As such, said limitation is not given patentable weight at this time. In order to be given patentable weight, a method limitation must materially effect the final product in a structural manner. The presence of process

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limitations on product claims in which the product does not otherwise patentably distinguish over the prior art, cannot impart patentability to the product. *In re Stephens*, 145 USPQ 656. The final product of a carpet having a layer of rebond foam cushion is the same whether or not said rebond foam layer is preformed or not.

The other claim amendments do not substantially change the scope of the invention, but rather are merely for clarification and consistency of claim language. Therefore, the prior art rejection is maintained.

4. Claims 5, 6, 18, and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over both of the cited HIGGINS patents and the DE SIMONE patent as set forth above, and in further view of EP 048 986 issued to DOW for the reasons of record.

5. Claims 61, 68, and 74 stand rejected under 35 U.S.C. 103(a) as being unpatentable over both of the cited HIGGINS patents and the DE SIMONE patent as set forth above, and in further view of US 5,616,200 issued to HAMILTON for the reasons of record.

6. Claims 144 and 145 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,522,857 issued to HIGGINS in view of 5,610,207 issued to DE SIMONE et al. and in further view of US 5,540,968 issued to HIGGINS.

New claim 144 limits the invention to further comprise a backing material below the rebond foam cushion, while new claim 145 limits the invention to further include an adhesive layer bonding said backing material to the rebond foam cushion. However, said new claims are also rejected over the cited prior art in that Higgins '968 employs such a backing material bonded to the foam cushion layer via an adhesive layer. Therefore, it would have been readily

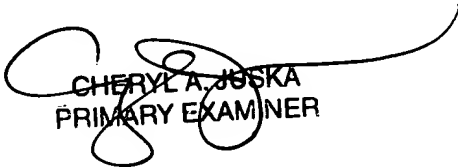
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obvious to one of ordinary skill in the art to employ the backing taught by Higgins '968 in order to enhance the dimensional stability of the carpet tile.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

8. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


CHERYL A. JUSKA
PRIMARY EXAMINER

cj
September 27, 2006